



[REDACTED]
Nominated Supervisor
Communities@Work Abacus Child Care and Education Centre

Email: [REDACTED]@commsatwork.org

Dear [REDACTED]

Show Cause Notice – Potential Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance. As you are aware, the Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law* (the *Law*). One of the Authority's roles is to investigate suspected offences under the *Law*.
2. Authorised Officers are currently investigating suspected offences at Communities@Work Abacus Child Care and Education Centre SE-00009744 (the Service), operated by Communities@Work PR-00005824 (the Provider). The Authority's records indicate that you were the nominated supervisor at the relevant time, having commenced in that role on 13 February 2017.
3. Web addresses to the *Law* and the *Education and Care Services National Regulations* (the *Regulations*) are provided for your convenience at the end of this notice.
4. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge) and the Authority has determined that there is sufficient evidence to support a case to answer regarding suspected offences under the *Law*. However, the Authority's investigation is not complete until you have had an opportunity to respond to the allegation/s and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you.
5. Detailed instructions of how to respond appear at the end of this Notice.
6. If substantiated, the allegation/s may constitute offences under sections 166 and 167 of the *Law* (or any combination). If, after considering all available evidence, the Authority finds any offences are substantiated, it will need to consider whether compliance action is required. All such determinations are made via the Authority's case management processes, involving a dedicated case management committee.
7. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions appear at the end of this Notice.

Background

8. On 29 November 2021, the Authority received a notification from the Provider regarding interactions of [REDACTED] with children, over an extended period of time, from 6 August 2021 to 23 November 2021. Refer Attachment A for documentation relevant to the notification.
9. It was noted that, [REDACTED] [REDACTED] was stood down during the Provider's enquiries and, at the conclusion, his contract was not renewed. The Authority is not aware of [REDACTED] [REDACTED] current employment arrangements
10. It was determined by the Authority that there were reasonable grounds to suspect that offences have, or may have, occurred at the Service and a decision was made to investigate suspected offences under sections 166 and 167 of the *Law*.

Allegation One – Inappropriate Discipline and Harms.

11. It is alleged that, on 6 August 2021, you as Nominated Supervisor failed to ensure that no child being educated and cared for was subjected to discipline that was unreasonable in the circumstances, in that [REDACTED] [REDACTED] (an educator employed at the Service) grabbed [REDACTED] [REDACTED] (a child being educated and cared for by the Service) by his upper arms, pulled him off a bike, then yelled words to the effect of "we don't do that!" close to his face, in response to [REDACTED] arguing with another child (unknown), in contravention of section 166(2) of the *Law*, engaging an additional offence under section 167(2) of the *Law*.
12. "Discipline" is any strategy employed by an educator with the intention of changing a child's behaviour. Discipline that is inappropriate within the meaning of section 166 of the *Law* includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child. Examples include yelling, physically dragging a child, unreasonable restraint of a child, using threatening or humiliating language, isolating, or shaming children.

Legislation Relevant to Allegation One

13. The following provisions of the *Law* and *Regulations* are relevant to Allegation One:

Section 166(2) of the *Law* – Offence to use inappropriate discipline

A nominated supervisor of an education and care service must ensure that no child being educated and cared for by the service is subjected to-

- (a) any form of corporal punishment; or
- (b) any discipline that is unreasonable in the circumstances.

Penalty: \$10 000

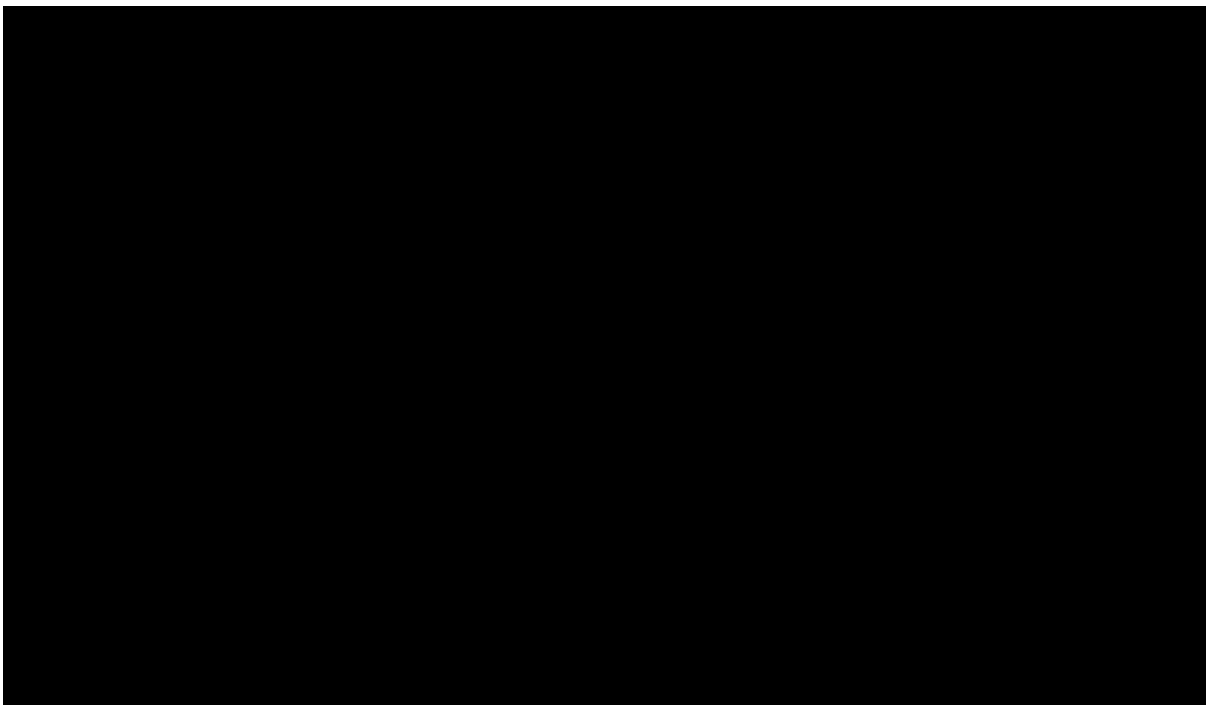
Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards

A nominated supervisor of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and care for by the service from harm and from any hazard likely to cause injury.

Penalty: \$10 000

Evidence Relevant to Allegation One

14. Records from the National Quality Authority ITS database indicate that you were the nominated supervisor at the time, having commenced in that role on 13 February 2017. Refer Attachment B.
15. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*.
16. Records produced by the Provider indicated that the Service was operating on 6 August 2021, [REDACTED] [REDACTED] was in attendance and [REDACTED] [REDACTED] was working directly with children.
17. Documents produced by the Provider included records of the Provider's investigation and outcomes. Refer Attachment C.
18. As part of the investigation, the Authority obtained statements from witnesses, relevant excerpts from which are included below. Please note that all witness statements were obtained exercising powers under section 215 of the *Law*. To clarify, all witnesses were compelled by notice to attend before Authorised Officers and provide evidence. Failure to comply is an offence under the *Law*, as is obstructing or hindering the Authority's investigation.
19. Relevant extracts from Witness A 's statement are:



[REDACTED]

20. Relevant extracts from Witness B's statement are:

[REDACTED]

21. The Authority's view is that ensuring children are not subjected to inappropriate discipline is a reasonable precaution to take to protect children from harm and from hazards likely to cause injury. Accordingly, a contravention of section 166(2) results in automatic substantiation of an offence under section 167(2) of the *Law*.

Contraventions Supported by Allegation One

22. Evidence gathered appears to support contraventions of sections 166(2) and 167(2) of the *Law*.

Allegation Two – Inappropriate Interactions and Harms

23. It is alleged that, between 6 August 2021 and 23 November 2021, you as nominated supervisor failed to take every reasonable precaution to protect children from harm or hazards likely to cause injury, in that [REDACTED] [REDACTED] was permitted to work directly with children without adequate strategies in place to ensure interactions were appropriate, which did not meet the requirements of Regulation 155.

24. Although Regulation 155 is an obligation imposed upon the Provider, significant non-compliance with Regulation 155 may support an offence under section 167 for a nominated supervisor. The Authority's view in this instance is that, if the allegation is substantiated, an offence under section 167(2) would be supported.

Legislation Relevant to Allegation Two

Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards

A nominated supervisor of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and care for by the service from harm and from any hazard likely to cause injury.

Penalty: \$10 000

Regulation 155 – Interactions with children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that –

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

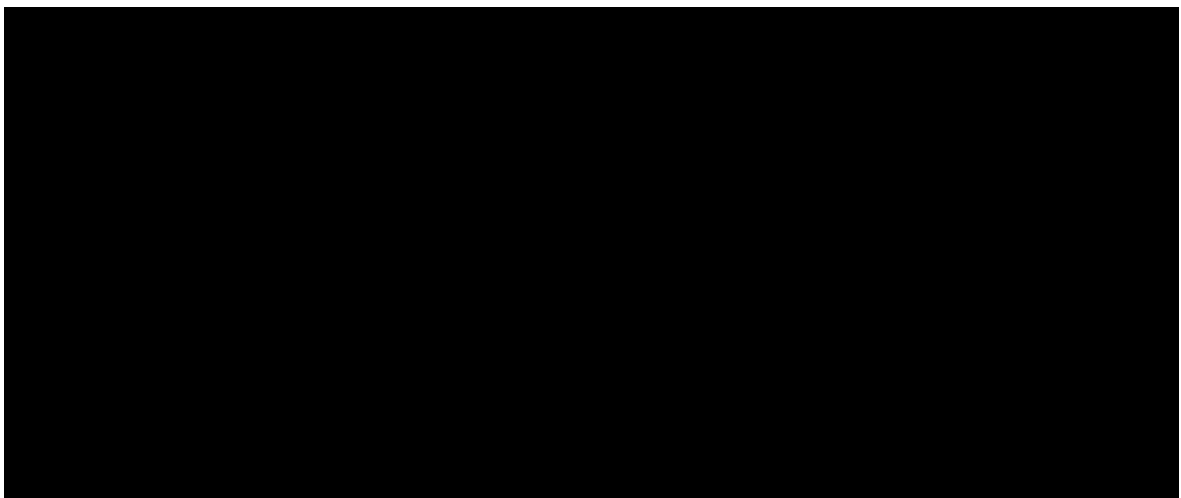
Evidence Relevant to Allegation Two

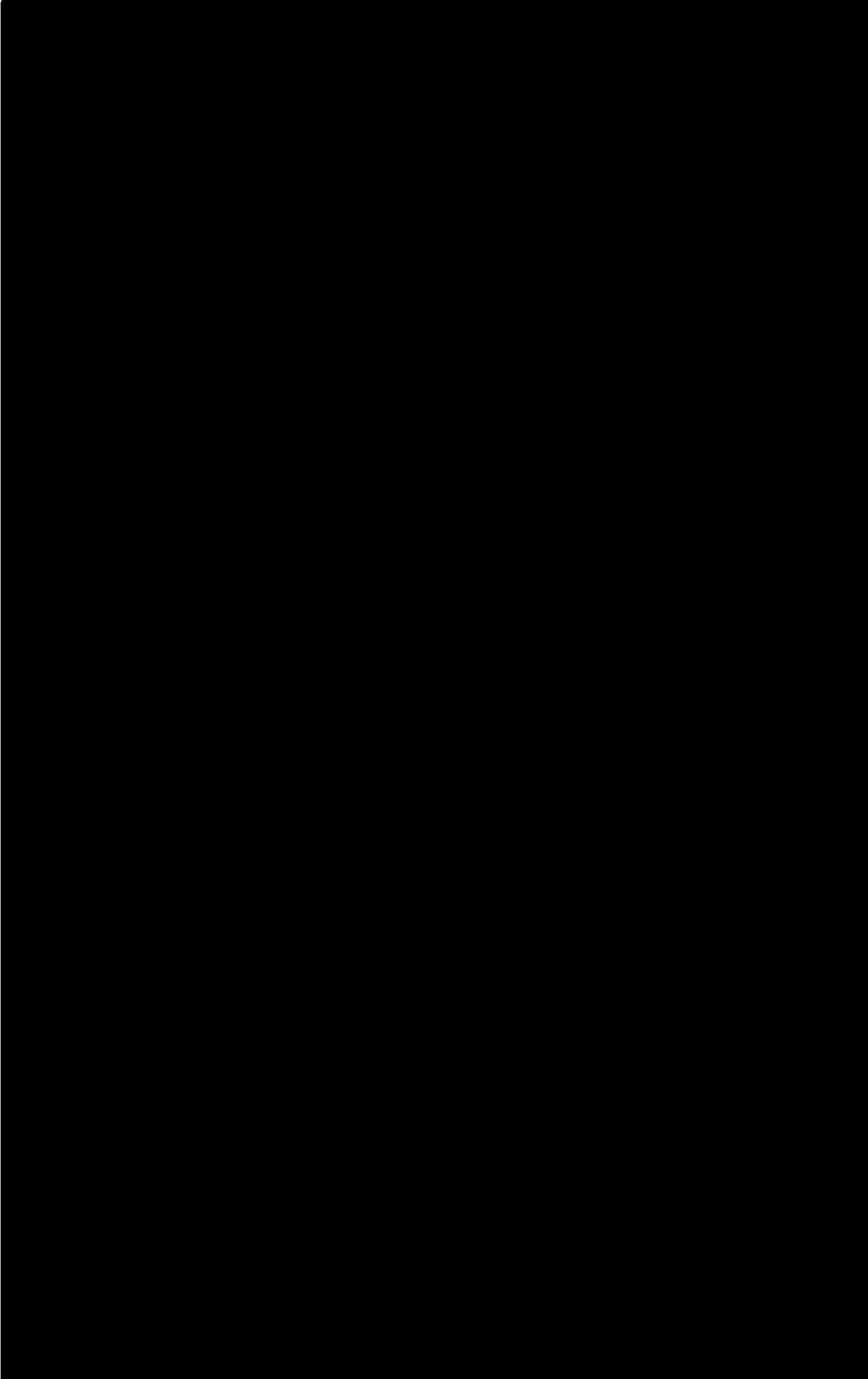
25. Documents produced by the Provider included:

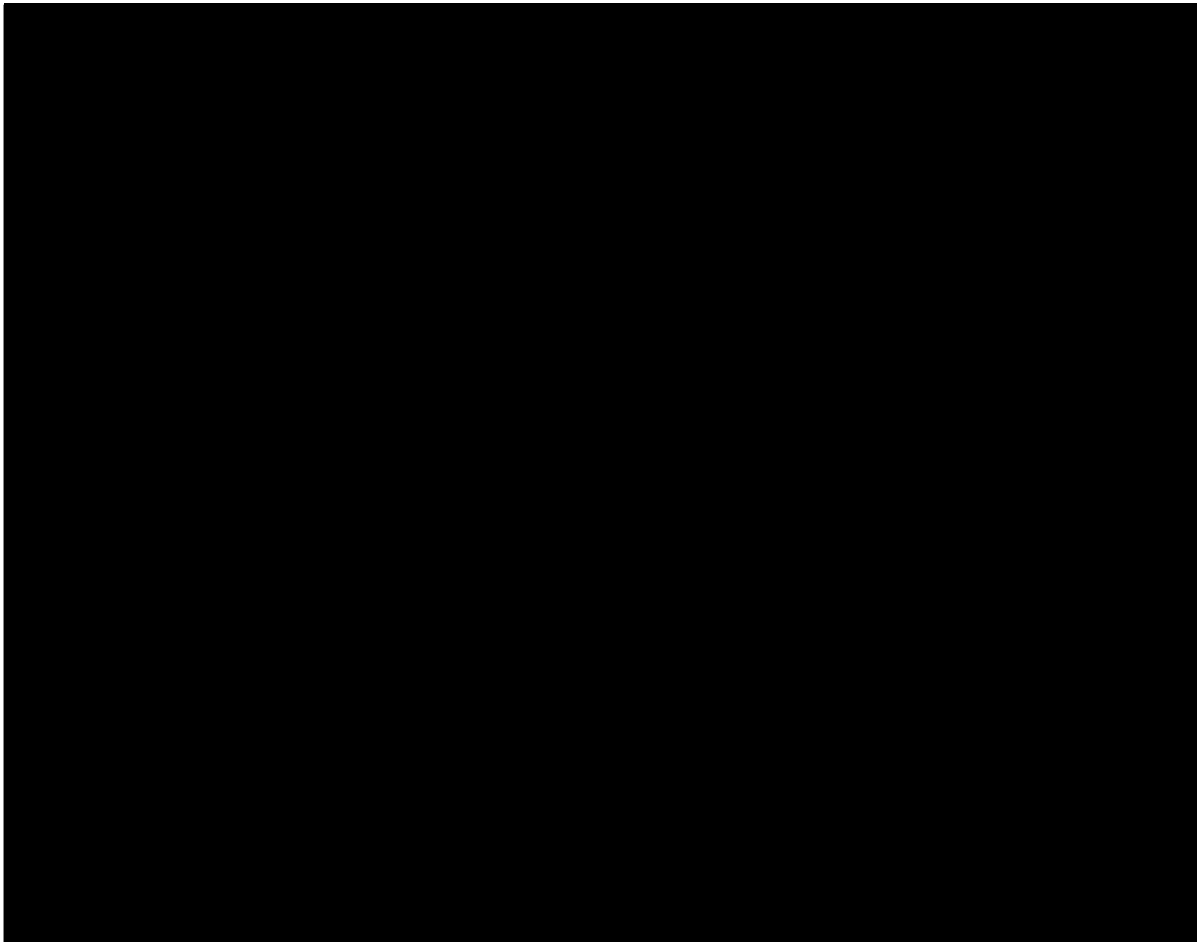
- a. records of the Provider's investigation and outcomes, including discussion note of 6 August 2021. Refer Attachment C;
- b. [REDACTED] [REDACTED] entire staff file, including:
 - i. notes of his interview on 27 November 2020, in which he disclosed [REDACTED];
 - ii. Employment history, indicating no previous experience working with children;
 - iii. Letter from [REDACTED] dated 29 October 2021;
 - iv. Australian Apprenticeships Training Plan, which indicated no special needs had been identified.

Refer Attachment D for extracts of staff file referred to.

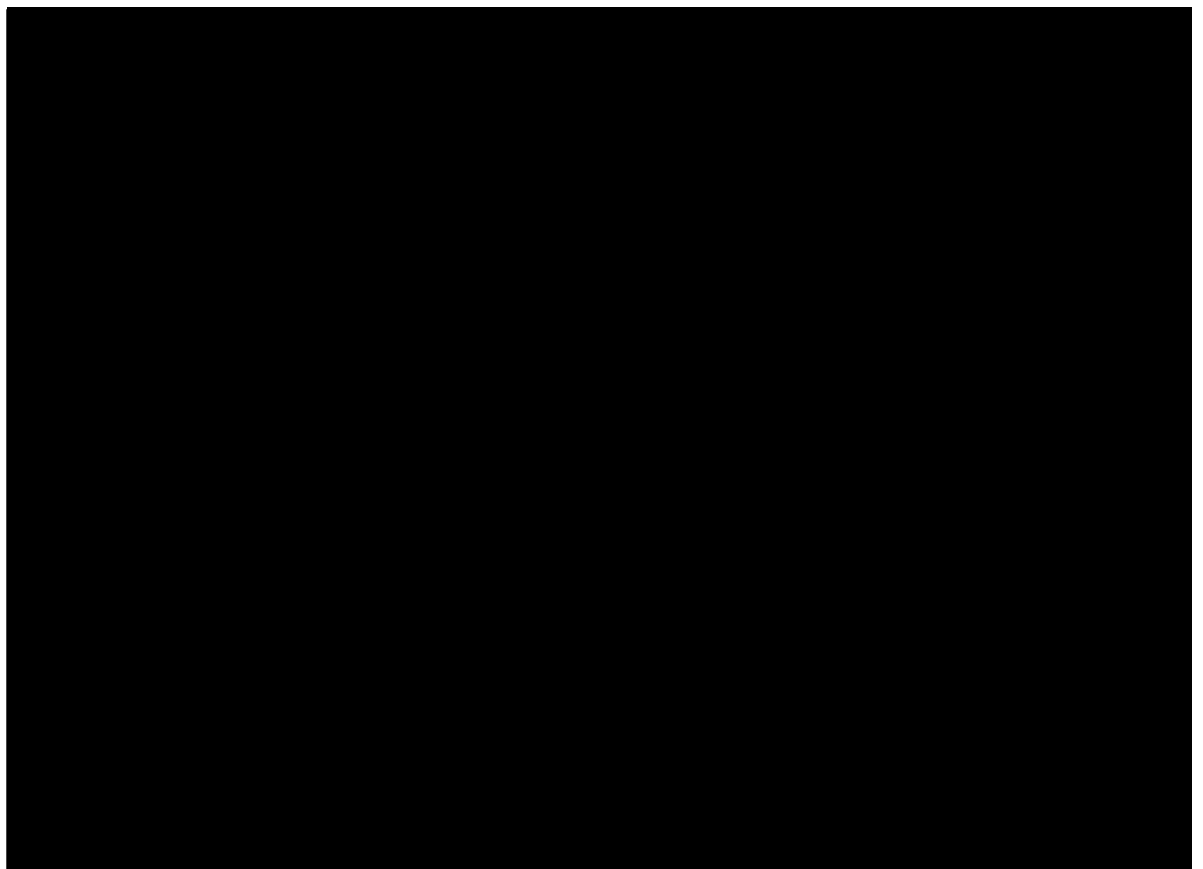
26. The staff file did not contain any indication of any regular direct monitoring or performance management plan being implemented.
27. As mentioned, additional evidence was obtained during the investigation from witnesses, utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.
28. Relevant extracts from Witness A are:

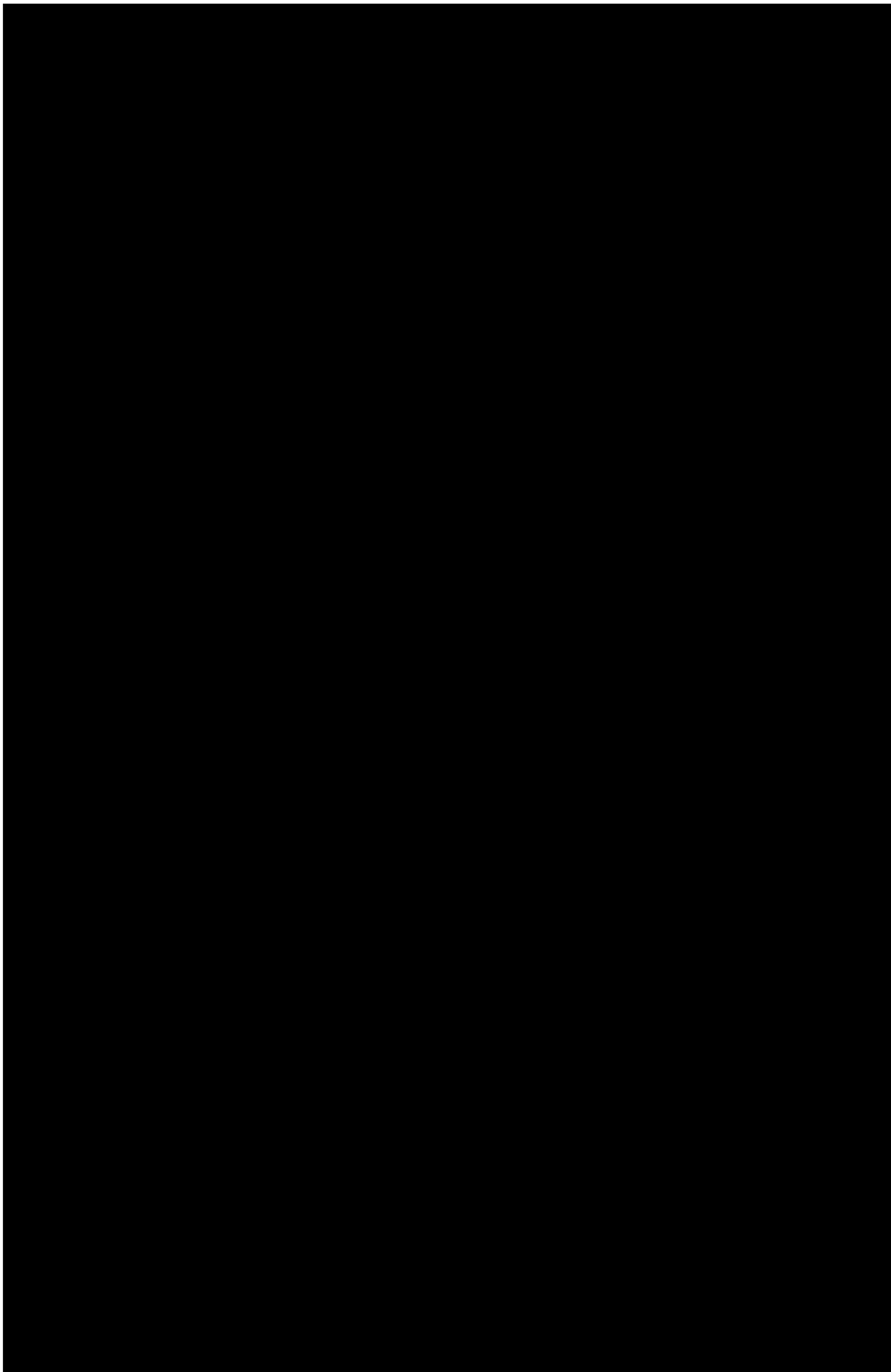


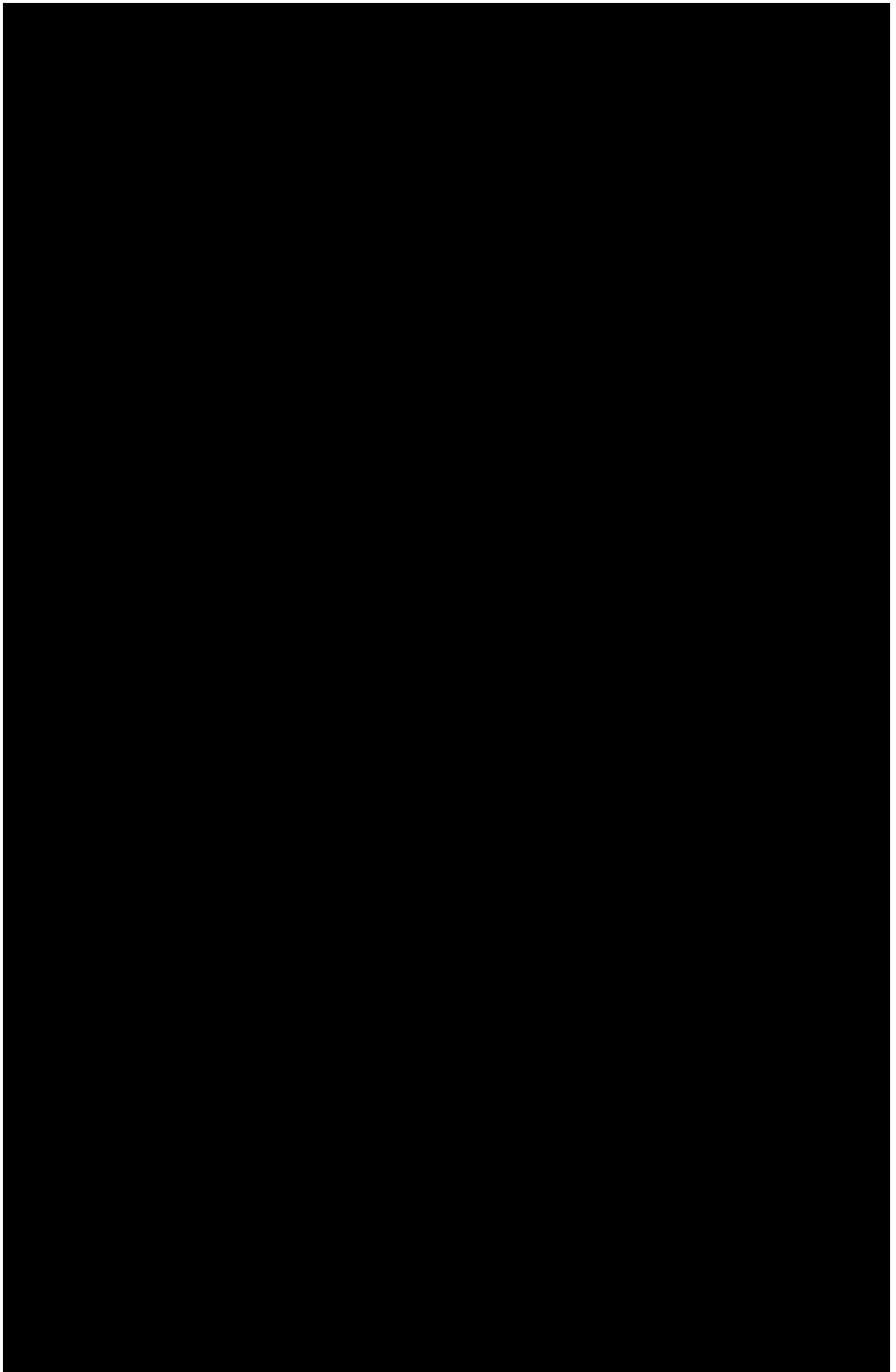


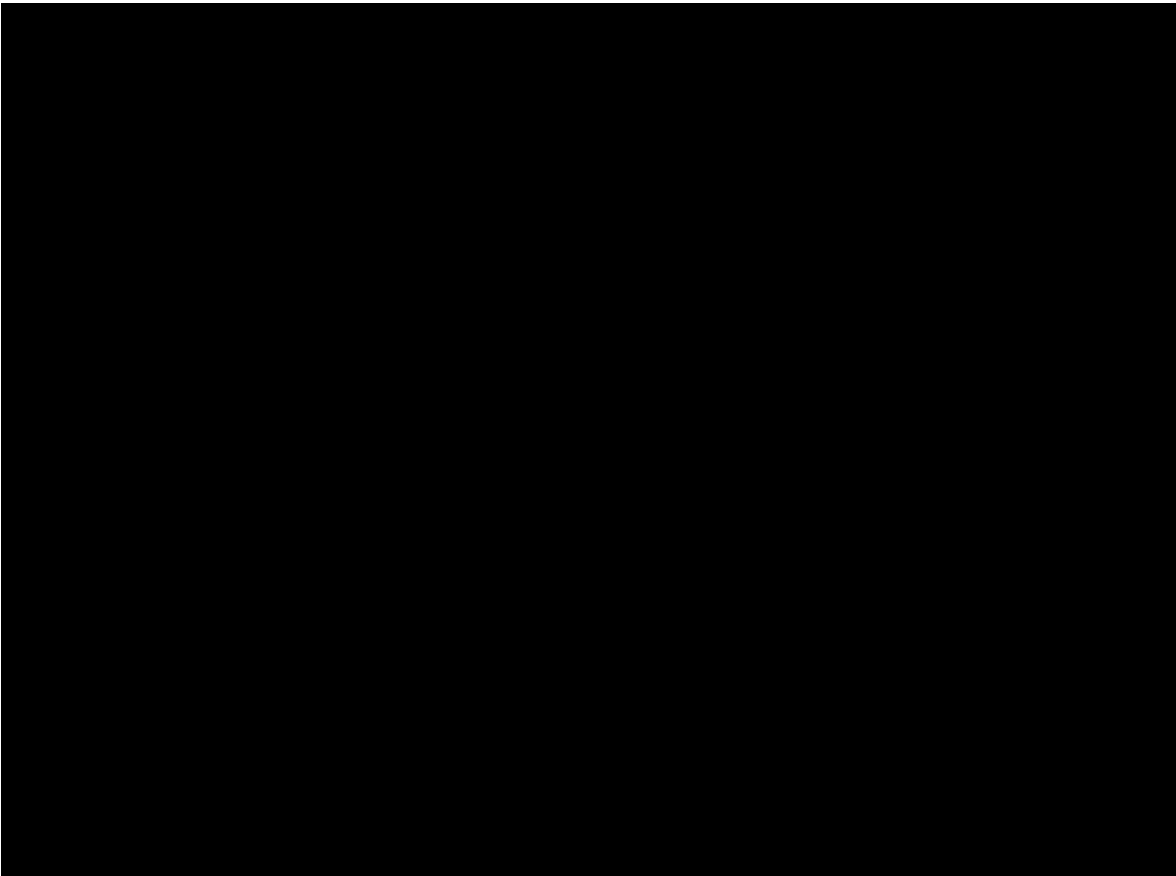


29. Relevant extracts from Witness B's statement are:









Contravention supported by Allegation Two

30. Evidence gathered appears to support a contravention of section 167(2) of the *Law*.

Fitness and Propriety as Nominated Supervisor

31. Regulation 117C provides some guidance on minimum requirements for a nominated supervisor, being that they must:
- a. be over 18 years of age;
 - b. have adequate knowledge and understanding of the provision of education and care to children; and
 - c. have the ability to effectively supervise and manage an education and care service.
32. The concept of fitness and propriety is not fixed. It is dependent on context and requirements of the particular position and may change over time to meet social and political expectations.
33. At minimum, fitness and propriety includes honesty, knowledge and ability.
34. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection from harm and hazards, and educational programs. Specific obligations are contained in both the *Law* and the *Regulations*. Accordingly, to be a fit and proper person to be appointed as nominated supervisor, the person must be honest, have a deep knowledge and understanding of the National Quality Framework (including

compliance responsibilities), and also possess the ability to manage educators and any other staff, service premises and relationships with families.

35. During the course of the investigation, evidence gathered included documentation supporting offences under section 166(2) and 167(2) of the *Law*, evidencing an apparent lack of appropriate support, performance management and monitoring of a trainee educator with a known disability, in circumstances where you had been made aware of inappropriate interactions.
36. This evidence raises a concern about your ability to manage and supervise an education and care service.
37. The purpose of this Show Cause Notice is to provide you with an opportunity to respond to the evidence outlined above, and to specifically address the point of your fitness and propriety to be a nominated supervisor.

Potential Compliance Action

38. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions, if any offences are substantiated and/or the Authority finds that you do not meet the fitness and propriety requirements to be a nominated supervisor. Potential compliance actions are under Part 7 of the *Law*, and include:
 - a. Non-statutory action such as a formal caution letter;
 - b. Enforceable undertaking under section 179A of the *Law*; or
 - c. Prohibition from acting in a role as Nominated Supervisor.
39. Relevant legislation for enforceable undertakings and partial prohibition appears below. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment. A partial prohibition only applies to the role of nominated supervisor and not to the education and care sector as a whole. It may prevent you from being in a role as nominated supervisor if the Authority finds that you are not fit and proper, or it may place conditions on you being in such a role if you are fit and proper but do not possess all the required skills and knowledge. It is not always permanent, and the partial prohibition must be cancelled by the Authority if it is satisfied that there is not a sufficient reason for the it to remain in force.

Section 179A - Enforceable undertakings

- (1) This section applies—
 - (a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law; or
 - (b) in the circumstances set out in section 27(a), 72(a) or 184(3).

- (2) If subsection (1)(a) applies, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.
- (3) If subsection (1)(b) applies in relation to the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions, or refrain from taking certain actions in relation to the education and care service.
- (4) If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions in relation to an education and care service.
- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.
- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

Section 182(3) - Grounds for issuing a prohibition notice

- (3) The Regulatory Authority may give a prohibition notice to a person to –
 - (a) Prohibit the person from being a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be nominated as a nominated supervisor of a service; or
 - (b) Impose one or more conditions on the nomination of the person as a nominated supervisor that the Regulatory Authority considers appropriate, if the Regulatory Authority considers the person is a fit and proper person to be nominated as a nominated supervisor of a service subject to those conditions.

Right of response

40. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice, in addition to the question of fitness and propriety. You may, within 14 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
41. At Attachment E to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Please direct your written submission via email to Tanya.Masterman@act.gov.au or by post to

Children's Education and Care Assurance
Attention Tanya Masterman
GPO Box 158

Canberra ACT 2601.

Caution

42. I am informing you that the excerpts of statements of witness taken for the purpose of the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation are **protected disclosures** under section 296 of the *Law*.
43. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
44. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
45. The *Law* applies to you as a nominated supervisor and to any service you are engaged at. The *Law* is applied in the ACT by the *Education and Care Services National Law (ACT) Act 2011* <http://www.legislation.act.gov.au/a/2011-42/default.asp>.
46. The *Law* and *Regulations* can be viewed at: <http://www.acecqa.gov.au/national-law>, and <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
47. Should you have any questions about this Show Cause Notice please contact Senior Investigator Tanya Masterman on email Tanya.Masterman@act.gov.au.

Yours sincerely



Clare Brookes
Senior Director
Education and Care Regulation and Support
ACT Education Directorate
22 March 2022